

*13 Cancel
1/17/03*

at least one mobile radio transceiver coupled to a microprocessor, said mobile radio transceiver capable of bidirectionally communicating voice and data between said mobile station and said fixed station, said [data] microprocessor capable of executing at least one application program;
said application program causing said mobile radio transceiver to establish communication with said fixed station upon the occurrence of a predetermined event, said application program then sending data to said fixed station.

REMARKS

By this paper, applicant is supplementing his response filed on August 20, 2003 and supplying documents identified in Information Disclosure Statements filed on September 2, 2003 and December 10, 2002. Applicant believes that all document copies that the Examiner indicated were missing from the IDS Form 1449 copy attached to his last Official Action dated July 25, 2003 are now being supplied with this Transmittal Letter and Response with the exception of the document identified as "O'Malley, Mobile Office, November 19, 1990, p. 45." Efforts are still under way to locate this article but it is noted that the date of publication is well after applicant's effective filing date and thus the missing document would not appear to be relevant to the Examiner's consideration of the patentability of the pending claims. Also supplied herewith is an executed Reissue Declaration as required in paragraph 7 of the Official Action dated July 25, 2003. A Supplemental Declaration pursuant to Rule 1.175 relating to all errors corrected by this application and executed by the inventor, Harry M. O'Sullivan, is also attached.

A Declaration under 37 CFR 131 has been prepared and is now being reviewed by Harry M. O'Sullivan, the named inventor in this application, wherein he states that he conceived his invention before July 13, 1984 (the effective filing date of US Patent No. 4,654,867 to Labetz et al.) and that he was diligent up to the date that his invention was reduced to practice in the later half of March 1985. Extensive documentary evidence (Exhibits A thru T) substantiating his declaration is attached to and described by Mr. O'Sullivan. It is anticipated that this Declaration will be finalized, executed and hand delivered to Technology Center 2600 by no later than the October 8, 2003. Upon review of this Declaration by the Examiner, the undersigned is confident

that the Examiner will agree that the conditions for swearing behind a reference has been established and that the rejections of claims 48 through 51 based on Labetz et al. '867 taken alone and in combination with other references should be withdrawn.

The undersigned also wishes to make of record that the subject reissue application is no longer involved in litigation as noted in the attached Exhibit C of the IDS filed December 10, 2002. All litigation involving the parent patent (4,697,281 and related divisional Reissue Patents 34,034 and 37,141) has been settled. In each litigation, the party opposed to the assignee of the subject applicant, MLR, LLC, has agreed to accept a license under the '034 and '141 Reissue patents and this second divisional reissue application. Accordingly, the special status afforded under Section 1442 of the MPEP for Reissue Applications involved in litigation no longer applies but this application is believed to be entitled to accelerated examination by virtue of its status as a reissue application.

By this Transmittal Letter and Supplemental Response, claim 48 has been amended (for a second time) to be consistent with the amendment made in the Response and Amendment filed on August 20, 2003. In particular, the second occurrence of the term "data processor" has been changed to "microprocessor" as was the first such occurrence.

In summary the status of the claims is as follows:

Original Claims 1-25 were canceled without prejudice (by the Supplemental Preliminary Amendment filed on July 24, 2002) since identical claims are present in allowed parent reissue application Serial No. 07/414,468 (now Re 34,034) of which this application is a second divisional reissue. Claims 26 through 30 were added by the Supplemental Preliminary Amendment of July 24, 2002 but these claims were cancelled and claims 31 through 51 were added by a Second Supplemental Amendment filed on November 15, 2002.

As noted above, claim 48 has been amended (for a second time) to provide proper antecedence for the term "processor" by changing "data processor" to "microprocessor". Claims

31 through 51 remain pending in this application of which claim 33 has been indicated as allowable.

A clean copy of the pending claims (with underlining to show that these claims have been added by this Reissue application and were not previously granted) is submitted herewith in a Claims Attachment. Support for the amendment to claim 48 exists in the following location (all references are to the printed specification of Re 34,034):

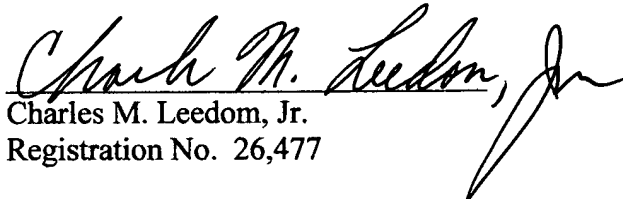
col. 5, line 65 thru col. 7, line 25

The undersigned stands ready to provide any additional information that might assist the Examiner in expediting consideration of this application and the Examiner is encouraged to contact the undersigned at the local telephone number or email address listed below.

Respectfully submitted,

Date:

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EXHIBIT C

Spectrum Information Technologies, Inc. and Spectrum Cellular Corporation v. Data Race, Inc., Civil Action 3:92-CV-2187-H, U.S. District Court for the Northern District of Texas, Dallas Division, Consent Judgment of infringement and validity in Spectrum's favor

Data Race, Inc. v. Spectrum Information Technologies, Inc., Civil Action No. 3:92-CV 2357, U.S. District Court for the Northern District of Texas, dismissed in favor of Dallas litigation

Spectrum Information Technologies, Inc. v. Microcom, Inc., Civil Action No. 3:92-CV 2357, U.S. District Court for the Northern District of Texas, Dallas Division, Consent Judgment of infringement and validity in Spectrum's favor

Spectrum Information Technologies, Inc. v. Motorola, Inc., Civil Action No. 95-U-234-NE, U.S. District Court for the Northern District of Alabama, dismissed as a result of Agreement and cross license between Spectrum and Motorola

O'Sullivan (Spectrum) v. Morris (ITC), Interference No. 103,466, US PTO Board of Patent Appeals and Interferences, priority awarded to O'Sullivan (Spectrum)

Nagel et al. (Compaq) v. Sainton (Spectrum), Interference No. 103,916, US PTO Board of Patent Appeals and Interferences, U.S. Patent and Trademark Office, priority awarded to Sainton (Spectrum)

Uddentfeldt (Ericsson) v. Sainton et al. (MLR, LLC), Interference No. 105,076, US PTO Board of Patent Appeals and Interferences, dismissed upon entry of adverse judgment against Uddentfeldt (Ericsson) awarding priority to Sainton et al. (MLR, LLC)

MLR v Nokia Corporation, Telefonaktiebolaget LM Ericsson, US Robotics, Sony-Ericsson Mobile Communications AB, Handspring, Toshiba, Samsung, Sierra Wireless, Kyocera (Japan), Civil Action No. 02 C 2898, U.S. District Court for the Northern District of Illinois, Eastern Division, dismissed as a result of all defendants agreeing to take licenses under MLR's patents except Kyocera (Japan)*.

*Kyocera (Japan) was dismissed for lack of jurisdiction without prejudice to MLR's right to bring suit against Kyocera (US).

Kyocera (USA) v. MLR, LLC, Civil Action No. 02 CV 0527 W (CGA), U.S. District Court for the Southern District of California, dismissed upon MLR's motion for lack of jurisdiction over MLR in California

Nokia Corp. et al. v. MLR, LLC, Civil Action No. 3:02cv02356K, U.S. District Court for the Northern District of Texas, Dallas Division, dismissed as a result of Nokia's Agreement to take a license under MLR's patents

Handspring, Inc. v. MLR, LLC, Civil Action No. 03-CV-00325 SBA, U.S. District Court for the Northern District of California, Oakland Division, dismissed as a result of Agreement by Handspring to take a license under MLR's patents

In Re MLR, LLC, Patent Litigation, The Judicial Panel On Multidistrict Litigation, Docket No. 1525, authorized coordinated and consolidated pretrial proceedings in the US District Court for the Northern District of Illinois.